

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION**

In re:

HUDLER TREE FARM, LLC,

Debtor.

Chapter 7

Case No. 18-50803

**TRUSTEE'S EX PARTE MOTION FOR AUTHORITY TO
PAY RENT DUE POST-PETITION**

A. Cotten Wright, the trustee in this matter (the "Trustee"), through counsel, hereby presents this *Trustee's Ex Parte Motion for Authority to Pay Rent Due Post-Petition* (this "Motion"), and in support, respectfully represents as follows:

1. On December 28, 2018 (the "Petition Date"), a voluntary petition for relief pursuant to chapter 7 of the Bankruptcy Code was filed on behalf of the debtor (the "Debtor"). The Debtor's case was assigned to the Trustee.

2. Before the Petition Date, the Debtor operated a Christmas tree farm in Ashe County, N.C. The Debtor has been party to a lease for a tract of land owned by Elizabeth and William Murphy ("Landlord") where Christmas trees are growing; the property is located at 625 Laurel Ridge Rd., Fleetwood, NC 28626 (the "Land").

3. The annual rent for the Land is \$1,000.00 due each year on December 31st. The Debtor's annual rent for 2019 came due post-petition on December 31, 2018 (the "2019 Rent"). A true copy of the Lease with payment terms is attached hereto as Exhibit A (the "Lease").

4. On January 22, 2019 the Court entered an Order authorizing the Trustee to employ Iron Horse Auction Co. to market and sell the Personal Property, including Debtor's Christmas trees through a public auction. The Christmas Trees located on the Land are being auctioned with the Lease to be assigned to the successful purchaser.

5. It is critical to the Trustee's ability to liquidate the Christmas trees on the Land to be able to assign the Lease. It is therefore necessary to assure that payments are current under the terms of the Lease.

6. For these reasons, the Trustee respectfully requests authority to pay the 2019 Rent in the amount of \$1,000.00 to the Landlord as an administrative expense.

WHEREFORE, the Trustee prays that the Court will enter an Order granting this Motion; authorizing the Trustee to pay the 2019 Rent of \$1,000.00 to the Landlord at an administrative expense; and granting such further relief as may be just and proper.

This is the 26th day of February, 2019.

/s/ Anna S. Gorman
Anna S. Gorman (State Bar No. 20987)
A. Cotten Wright (State Bar No. 28162)
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Attorneys for the Trustee

EXHIBIT A

North Carolina

Ashe County

Lease and Agreement

This Lease and Agreement made and entered into this 19th day of

April, 2017. By and between Elizabeth Littleton Murphy and William Jett Murphy Sr. ,hereinafter referred to as Lessors and Hudler Tree Farm, LLC, hereinafter referred to as Lessee:

Whereas ,Lessors own tracts of land containing approximately 4 acres of land which is the property deeded to them by deed recorded in deed book #307 page 1585 of the Ashe County Registry to which deed reference is hereby at 625 Laurel Ridge Rd. South, Fleetwood , N.C. 28626. Parcel number 13194285. Included in the 4 acres is a small section of land in Deed book #307, page 1585, parcel 13194272.(thumb).

And Whereas, Lessee desires to lease the cleared and designated portion of the said land for the purpose of planting Christmas trees on the cleared portion of that land. And Whereas, only the cleared and designated portion of said land is being leased hereunder.

Now, therefore, Lessors agree to lease the cleared and designated portion of the 4 acres of land under the following terms and conditions:

1. This lease shall exist as a payment of \$1000.00 and continue for a period of ten years from the date of the lease and shall terminate on the 31st day of December in the 10th year which is on December 31st, 2026. Payment dates are April 2017 at signing, then by 12/31/2018, 12/31/2019, 12/31/2020, 12/31/2021, 12/31/2022, 12/31/2023, 12/31/2024, 12/31/2025, and 12/31/2026. The rental to be paid for the lease shall be \$250 per acre per year for the term of the lease.
2. During the term of the lease, the lessors shall pay all Ashe County ad valorem taxes on the leased premises.
3. The Lessee has no hunting privileges on leased land.
4. It is understood and agreed that the lessee shall use the determined for growing, cultivating, and sheering and harvesting Fraser Fir Christmas trees. The Lessee agrees that he will maintain the existing roadway on the subject premises in as good of condition that exists at the inception of this Lease, with regard to any damage done by his employees or agents, and that he will be responsible for the removal of any trash placed on the subject premises by their employees or agents. Lessee is responsible for using all materials used for Christmas tree care in the label instructed manner.
5. The Lessee further agrees to indemnify Lessors from any and all liability that might result from anyone hurt on the leased premises hereafter and does further agree to indemnify Lessors from any and all actions that might be begun against the Lessors by reason of their ownership of the property for anything done by the Lessee during his tenancy hereunder and such indemnity shall also cover not only any damages that anyone might recover against the Lessors but also the cost of defending any such action including reasonable attorney fees.
6. The Lessee will at the completion of the lease cut all remaining trees in the production areas and also make sure the stumps are cut low to the ground.
7. This lease cannot be assigned without permission of the Lessor.
8. The terms of this lease shall be binding upon the parties, their heirs, executors, administrators or assigns.
9. All fences shall remain intact. Gates will be closed upon leaving the property.

State of North Carolina

County of Ashe

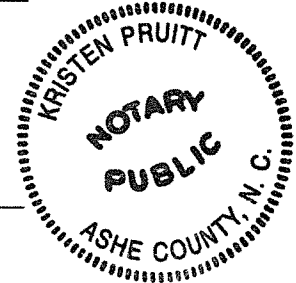
I, a Notary Public of the County and State aforesaid, certify that Dale F. Hudler, CEO-Owner of Hudler Tree Farm , LLC, a North Carolina Limited Liability Company, personally appeared before me this day and after being duly sworn by me, acknowledged the due execution of the foregoing instrument on behalf of the LLC.

Witness my hand and official stamp or seal this the 19 day of April 2017.

Kristen Pruitt Kristen Pruitt

Notary Public

My Commission Expires: October 24, 2021



In WITNESS WHEREOF, the parties hereto have hereunto set their hands and seal the day and year first above written.

Elizabeth Littleton Murphy

Elizabeth Littleton Murphy

William Jett Murphy Sr.

William Jett Murphy Sr.

Dale F. Hudler

Dale F. Hudler

State of NORTH CAROLINA

County of Ashe

I, a Notary Public for the County and State aforesaid, do hereby certify that Elizabeth Littleton Murphy and William Jett Murphy Sr., Lessors, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official stamp or seal, this the 19 day of April, 2017.

Kristen Pruitt Kristen Pruitt

Notary Public

My Commission Expires: October 24, 2021

